contend that provisions in the *wakaf* as to the discharge of the donor's outstanding debts are contrary to Muslim law and therefore make the *wakaf* void. It was contended that the *wakaf* must specify that that should be paid out of the income. In support of this proposition no authority was cited nor am I able to find any authority to support it.

In so far as sub-paragraphs (B), (D) and (E) of paragraph 7 are concerned I am unable to agree with the plaintiffs.

However in view of my finding in respect of sub-paragraph 7(A), and 7(C), I give judgment for the plaintiffs and hold that the *wakaf* is void. I also order that the lease of the 7th January 1961 be set aside and award the costs of this action to the plaintiffs.

Judgment for the plaintiffs.

Solicitors: *Lim Cheng Ean & Co.; Chung & Huang; Maxwell, Kenion, Cowdy & Jones; Wrigglesworth & Co.*

SINO-BRITISH (M) LTD. v. NANYANG DEVELOPMENT CO. (M) LTD. & ANOR.

[O.C.J. (Abdul Aziz J.) January 22, 1969]
[K.L. — Civil Suit No. 422 of 1966]

Principal and Agent — Agent untruly warranting authority — Principal not ratifying acts of agent — Liability of agent.

Costs — Successful joint defendant denied.

Contracts (Malay States) Ordinance, 1956, ss. 186, 188.

The plaintiff brought this action against the first defendant and its agent, the second defendant claiming for value of work done by the plaintiff for the first defendant at the request of the second defendant. The plaintiff's evidence was that the second defendant represented himself as the agent of the first defendant and ordered the works to be done which the plaintiff carried out in good faith.

Both defendants denied liability. The second defendant's evidence was that at the material time he was the director and manager of a company called K.L. Properties Ltd., which owned the properties on which the works were to be carried out. He denied acting as the agent of the first defendant and having authority to contract on its behalf.

Held: on the evidence the second defendant untruly represented himself to be the authorised agent of the first defendant and not K.L. Properties Ltd. for it was highly unlikely that the plaintiff would have demanded payment from the first defendant if the first defendant had not been represented as the principal. In such a case, if the representer's acts are not ratified, the representer is personally liable to make good the loss or damage suffered by the representee. In this case since the first defendant had not ratified the second defendant's acts the second defendant was liable for the value of the work done.

CIVIL SUIT.

N.A. Marjoribanks for the plaintiff.

Chooi Mun Sou for the defendants.

Cur. Adv. Vult.

Abdul Aziz J.: According to the pleadings, the plaintiff's claim is that the defendants jointly ordered and are, therefore, jointly liable for the cost of the work done by the plaintiff. The defendants (note the plural) merely denied liability. Defendant No. 2 further denied having had any dealings whatsoever with the plaintiff. The evidence disclosed that the plaintiff's action was against the Nanyang Development Co. (M) Ltd. as principal (defendant No. 1) and Cheah Yap Thin as agent (defendant No. 2) for value of work done by the plaintiff for the defendant (1) at the request of the defendant (2). The defence is that the work was done for another principal, i.e. K.L. Properties Ltd. No objections were taken to the pleadings and no steps were taken to amend the pleadings.

The plaintiff's evidence, which has in no way been discredited, is that the second defendant representing himself as the agent of the defendant (1) ordered parquet flooring to be laid in 72 flats at Jalan Bukit Bintang. Acting in good faith, the plaintiff carried out the work and then requested for progress payments and, subsequently, for the final payment. Several reminders were sent to the defendant (1) to the address of the first defendant, which was also the address of the second defendant. There was no response either from the defendant No. 1 or the defendant No. 2 to these demands. The letter purported to be issued by the defendant No. 1 denying liability — which was disputed by the plaintiff — was rejected as it was unproved.

Defendant No. 2's evidence is that he had no authority to contract on behalf of defendant No. 1. At the material time, he was not the director of the firm and not an agent of the defendant (1) and the defendant (1) was in no way connected with the construction of the flats. On the material date, he was the manager and director of the K.L. Properties Ltd. They were the developers and the owners of the flats in question. He knew that parquet flooring was laid in the flats, but he did not know who did the job and whether it had been paid for or not. He did not order anything on his own behalf. K.L. Properties Ltd. should rightly be sued for the amount. Having regard to the size and the value of the work done, it seems to me farfetched that defendant No. 2, who was directly concerned with the construction of the flats, was not aware who did the work and whether the work was paid for or not. Also, it is highly unlikely plaintiff would have demanded payment from defendant No. 1 if defendant No. 1 had not been represented as the principal. That representation by defendant

No. 2, from the evidence, was untrue. Whether such misrepresentation was innocent or fraudulent is uncertain and immaterial. But having regard to the fact that there was no response to the demands and no disclosure until the trial of the true principal, the latter is the more probable. Any liability of the defendant (1) had been repudiated, if not before, by the pleadings. If it were true that the defendant No. 2 was merely acting as an agent of K.L. Properties Ltd. when he ordered the works to be performed, it would seem strange that he did not disclose it earlier or took any step to join the proper principal as a co-defendant under the third party procedure.

The common law rule regarding liability in such cases is to be found in section 188 of the Contracts (Malay States) Ordinance, 1950:—

"A person untruly representing himself to be the authorised agent of another and thereby inducing a third person to deal with him as such agent, is liable, if his alleged employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing."

Under section 186, which is a substantive law and not merely adjectival, the third party may hold either or both the principal and agent liable for the costs incurred:—

"In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable."

Since the defendant (1) has not ratified his acts, the defendant No. 2 must be adjudged as the person liable for the costs as claimed plus the costs of the action.

In view of the conduct of defendant (1), no costs will be granted to them.

Order accordingly.

Solicitors: *Lovelace & Hastings; Chooi & Co.*

PUBLIC PROSECUTOR v. ONG KOK TAN

[F.C. (Azmi L.P., Ong Hock Thye C.J. (Malaya) & MacIntyre F.J.) January 24, 1969]

[K.L. — Federal Court Criminal Reference No. X2 of 1968]

Road Traffic — Public service vehicle — Prohibition of use of unlicensed — Insurance — Third party risks — Charge under s. 92(1) made at same time as charge under s. 74(2) of Road Traffic Ordinance, 1958 — Whether proper joinder — Road Traffic Ordinance, 1958, ss. 74(2), 92(1) & 144(a).

Evidence — Police observations on motor vehicle used as a public service vehicle without valid insurance — Admissibility of — Evidence Ordinance, 1950, s. 15.

Criminal Law and Procedure — Charge under ss. 92(1) and 74(2), Road Traffic Ordinance, 1958 — Whether proper joinder — Criminal Procedure Code (Cap. 21), s. 175.

The questions reserved for the decision of the Federal Court in this case were: (a) whether the evidence of observations obtained on a motor vehicle used as a public service vehicle without a valid licence in force, prior to the date mentioned in a charge under section 92(1) of the Road Traffic Ordinance, 1958, is admissible, and (b) whether a charge under section 92(1) made at the same time as a charge under section 74(2) of the said Ordinance though made under different parts thereof is a proper joinder.

Held: (1) the evidence of observation is relevant by virtue of section 15 of the Evidence Ordinance and may be used by the prosecution in rebuttal of the anticipated defence. As material and relevant evidence it could be used both in support of the presumption under section 144(a) of the Road Traffic Ordinance and to corroborate evidence of payment by a witness for the prosecution. Evidence of observations thus used in conjunction with the presumption, or with oral evidence of payment of fares, strengthens considerably the case for the prosecution by rebutting any possible defence. Therefore the answer to the first question should be in the affirmative;

(2) in considerng whether to allow joinder or not, the paramount consideration would be that any order whether allowing or refusing a joinder should only be made after consideration of whether such order would prejudice or embarass the defence. In this case the defence was never in the least prejudiced. Therefore the answer to the second question should also be in the affirmative.

Cases referred to:—

(1) *Ali bin Hassan* v. *Public Prosecutor* [1967] 2 M.L.J. 76.

(2) *Gan Chye Huat* v. *Public Prosecutor* [1962] M.L.J. 27.

(3) *Abdul Hamid* v. *Public Prosecutor* [1962] M.L.J. 44.

(4) *Public Prosecutor* v. *Ong Hock Thuan* [1963] M.L.J. 10.

(5) *Darus* v. *Public Prosecutor* [1964] M.L.J. 146.

(6) *Maidin Pitchay & Anor.* v. *Public Prosecutor* [1968] 1 M.L.J. 82.

(7) *Gun Kim Luu* v. *Public Prosecutor* [1961] M.L.J. 35.

(8) *Public Prosecutor* v. *Leong Kow Chai* [1968] 2 M.L.J. 29.

(9) *Public Prosecutor* v. *Mohamed Yunus* (unreported, 1960) Kuala Lumpur Criminal Appeal No. 65 of 1960.

(10) *Public Prosecutor* v. *Ooi Seng Huat* [1968] 2 M.L.J. 168.

(11) *Makin* v. *Attorney-General of New South Wales* [1894] A.C. 57 at 65.

(12) *Connelly* v. *Director of Public Prosecutor* [1964] 2 All E.R. 401.

(13) *R.* v. *Jones* [1918] 1 K.B. 416.

FEDERAL COURT.

K. Somasundram (Senior Federal Counsel) for the applicant.

K. d'Cruz for the respondent.

Cur. Adv. Vult.

Azmi L.P.: The High Court at Malacca on the application of the Public Prosecutor reserved